IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1165 OF 2002
IN
SUIT NO.1332 OF 2002

Jagruti M. Bhatt Plaintiff

versus

Mayur Manubhai Bhatt and another Defendants

Ms.Dinesh Shah for plaintiff.

Mr.A.S.Kapse for defendants 2 to 21

None for defendant no.1

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th June 2005

PC :

1. Heard Mr.Shah in support of this Motion. Notice of Motion is taken out by the plaintiff - wife in a suit which is filed by her for a declaration that she is the sole and absolute owner of the suit premises. This declaration is sought on the basis that it is her matrimonial home.

2. It is contended that the plaintiff is married to defendant no.1. Plaintiff is residing in

these premises along with one son and one daughter. These are the issues from the wedlock of the plaintiff and the first defendant. It is her grievance that on account of harassment and ill-treatment for some time she had to leave the matrimonial home. Later on because of the intervention of defendant no.1 and others, she returned to the matrimonial home and she is residing there.

3. On account of the fact that some proceedings were pending in the Family Court and further apprehension that the matrimonial home/suit premises would be disposed off, that the present suit is filed and Notice of Motion is taken out. At ad-interim stage this Court has granted ad-interim order in terms of prayer clause (a)(ii) thereby restraining the first defendant from disposing off, encumbering, transferring, conveying or creating any third party right in respect of suit premises.

4. At that stage also the husband, although served, did not appear. Today also none appears for the first defendant. However, Mr.Shah states that one advocate had contacted him during the vacation and stated that appearance would be

filed for the first defendant. However, neither any appearance is filed nor the said advocate has appeared. Mr.Shah undertakes to file an affidavit proving service of the Notice of Motion and affidavit in support.

5. In the light of the fact that there is no affidavit in reply filed to the Notice of Motion, ad-interim order to continue till hearing and final disposal of the suit. This order is passed also because Mr.Shah states that now the Family Court has granted a decree in favour of the plaintiff in a petition filed by her for restitution of conjugal rights. That decree is passed on 31st December 2004.

6. Mr.Kapse appears for defendant no.2 bank. However, insofar as second defendant bank is concerned, it has been impleaded because according to the bank in Section 101 proceedings of Maharashtra Co-operative Societies Act, 1960, a Recovery Certificate is issued against first defendant and that is being executed insofar as his properties are concerned. In my view, the order passed today restraining first defendant would not in any manner prejudice rights of the bank in law to execute the Recovery Certificate.

However, before taking any proceedings in respect of the suit premises/flat, the bank would give 72 hours prior notice to the plaintiff, to enable her to take out appropriate proceedings. Notice of Motion disposed off.

(S.C.DHARMADHIKARI, J.)